

# OSCE/ODIHR Submission of Information about an OSCE Participating State under Consideration in the Universal Periodic Review Process

**Participating State:** Serbia

**UPR Working Group Session and Date of Review:** 43<sup>rd</sup> Session, February 2023

## Background

1. Serbia has been a participating State (pS) in the Organization for Security and Co-operation in Europe (OSCE) since 2006 when it was admitted as a new pS (Yugoslavia was an original signatory of the CSCE Final Act), and has thus undertaken and recently reaffirmed a wide range of political commitments in the “human dimension” of security as outlined in relevant OSCE Documents.<sup>1</sup>
2. The OSCE Office for Democratic Institutions and Human Rights (ODIHR) has been mandated by OSCE pSs, to assist them in implementing human dimension commitments. ODIHR assistance includes election observation and assessment activities as well as monitoring and providing assessments, advice and recommendations relating to implementation of commitments in the fields of human rights, democracy, tolerance and non-discrimination, and the situation of Roma and Sinti.
3. The present submission provides publicly available country-specific information that may assist participants in the Universal Periodic Review in assessing the situation in Serbia and its implementation of past recommendations, and to formulate new recommendations that may be relevant to enhancing the enjoyment of human and fundamental in Serbia.

## Legislation reviewed by ODIHR

4. Upon request by authorities of an OSCE pS, an OSCE field operation or another OSCE institution, ODIHR reviews draft or enacted legislation of OSCE pSs on topics relating to the human dimension of security for its conformity with OSCE commitments and other international standards.<sup>2</sup> In 2017-2022, the following legal opinions (on topics other than elections) were issued on (draft) legislation of Serbia:

### *Opinion on the Law on Youth*<sup>3</sup>

5. On 6 August 2021 the Head of the OSCE Mission to Serbia requested a legal review of the Law on Youth (“the Law”) at the request of the Ministry of Youth and Sports of Serbia.
6. While there are no international legal norms and instrument focusing specifically on youth or young persons, general human rights instruments as well as the UN Convention on the Rights of the Child (UNCRC) together with other youth policy instruments at international and regional levels have guided the analysis of the Law. The reviewed Law would benefit from expanding its scope by reflecting youth as not only carrying responsibilities *vis-à-vis* society but also as right-holders and by promoting youth participation in public and

<sup>1</sup> OSCE/ODIHR, *Compendium of OSCE Human Dimension Commitments: Volume 1, Thematic Compilation (third edition)*, and *Volume 2, Chronological Compilation (third edition)*, 2011; OSCE *Astana Commemorative Declaration: Toward a Security Community*, 3 December 2010.

<sup>2</sup> The legal reviews and opinions, often produced in co-operation with the Council of Europe’s Commission for Democracy through Law (Venice Commission), are available at <http://www.legislationline.org>.

<sup>3</sup> *Opinion on the Law on Youth of Serbia*. 8 November 2021

political life. The Law could further be strengthened by clarifying the role of youth associations in policy-making and decision-making processes. The following main recommendations were made:

- Draw a distinction, in line with the UNCRC, between those under 18 years, who are entitled to special protection, and those over 18 years;
- Reinforce throughout the Law a rights-based approach with a direct reference to young people enjoying human rights and fundamental freedoms, and their role in democratic processes;
- Include an intersectionality across the Law to ensure that youth from different backgrounds, with different access needs and issues are taken into account in the development of strategies and programmes, and provide funding to youth actors to address specific challenges;
- Integrate qualitative requirements such as independence, democratic nature, diversity and inclusion that associations, federations and umbrella federations should respect;
- Ensure that the requirements for associations and federations respect the right to freedom of association and do not create undue burdens; and
- Ensure that public funding be allocated through a transparent procedure and an informational campaign delivered to all potentially interested associations.

### **Election-related activities**

7. In the reporting period, ODIHR observed the following elections.

#### *Parliamentary elections, 21 June 2020*

8. ODIHR established a Special Election Assessment Mission (SEAM) to observe the 2020 parliamentary elections.
9. The SEAM concluded that the elections “*were administered efficiently, despite challenges posed by the COVID-19 pandemic, but the dominance of the ruling party, including in the media, was of concern. Outside the state of emergency, contestants were able to campaign, and fundamental freedoms of expression and assembly were respected. The advantage enjoyed by the governing parties, the decision of some opposition parties to boycott the elections, and limited policy debate narrowed the choice and information available to voters. Most major TV channels and newspapers promoted the government’s policies and gave it extensive editorial coverage, limiting the diversity of views.*”
10. On 4 March, the president called parliamentary elections for 26 April. However, the election process was suspended on 16 March, after a state of emergency was declared in response to the COVID-19 pandemic. The election process resumed on 11 May, with a new date set for 21 June. The elections were marked by intense political polarization, and many opposition parties boycotted the elections due to the lack of conditions for conducting democratic elections.

11. In December 2019 and February, March and May 2020, the parliament adopted several legal amendments. Several previous ODIHR recommendations remain unaddressed, such as lack of clarity of candidate registration rules, insufficient measures regarding misuse of administrative resources for campaigning, inadequate regulation and oversight of campaign finance, deficiencies and loopholes in dispute resolution, absence of sanctions for some election violations, and lack of provisions on election observation.

12. The Final Report published on 7 October 2020<sup>4</sup> included the following recommendations:<sup>5</sup>

- Adopt legal changes following public consultations. Fundamental aspects of the election framework should not be changed within one year prior to an election;
- Substantial regulations should be included primarily in the laws adopted by parliament. Technical matters should be regulated by secondary legislation, including instructions of the Republic Electoral Commission (REC);
- Require reporting and disclosure of campaign income and expenditure prior to Election-Day. Consideration could be given to making the Anti-Corruption Agency's conclusions mandatory and publishing them following the more expedient publication of contestants' financial reports;
- Voter lists should be made available for public scrutiny and authorities should conduct and audit of them as soon as possible. The laws on the Unified Voter Register and on Personal Data Protection should be harmonized and should detail the scope of personal data of voters that can be published ;
- Extend the deadlines for filing complaints with and reaching decisions by the REC and the Administrative Court. Submission-deadlines should run from the moment the irregularity is known by the complainant;
- The REC could be assigned with rectifying or overturning decisions taken by lower-level election commissions and with annulling elections entirely or in one or more polling stations if it determines that irregularities affected the outcome;
- The law should provide for the prompt publication of all scanned Polling Board (PBs) results protocols and election results by polling station, including those corrected later in the process or determined by repeat elections.

*Presidential and early parliamentary elections, 3 April 2022*

13. ODIHR established an Election Observation Mission (EOM) to observe the 3 April 2022 presidential and early parliamentary elections.

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<sup>4</sup> Final Report.

<sup>5</sup> In paragraph 25 of the 1999 OSCE Istanbul Document, OSCE pSs committed themselves "to follow up promptly the ODIHR's election assessment and recommendations".

14. The mission concluded that the elections “*presented diverse political options, but a number of shortcomings resulted in an uneven playing field, favouring the incumbents. While fundamental freedoms were largely respected during the campaign, the combined impact of unbalanced access to media, undue pressure on public sector employees to support the incumbents, significant campaign finance disparities and misuse of administrative resources led to unequal conditions for contestants. Recent legislative changes were adopted following extensive discussions among the ruling parties, and some of the opposition included some welcome improvements, but key aspects of the electoral process require further reform and implementation. While media covered all electoral contestants, most public and private broadcasters with national coverage favoured the incumbent president and the ruling coalition, limiting the opportunity of voters to make fully informed choices. Election day was smoothly conducted and peaceful overall but, despite solid preparations, was marked by a number of systematic procedural deficiencies related to polling station layout, overcrowding, breaches in the secrecy of the vote and numerous instances of family voting.*”
15. On 15 February 2022, the president dissolved the parliament and scheduled early elections for 3 April 2022. Subsequently, the speaker of the outgoing parliament called the regularly held presidential elections to take place concurrently. The presidential and early parliamentary elections were marked by significant polarization between the ruling and opposition parties. However, all political parties participated in these elections, including the opposition that boycotted the previous election. The legal framework was significantly revised in February 2022, following two dialogues between the ruling and opposition parties. The changes addressed some prior ODIHR recommendations, including regulating the work of mid-level election commissions; increasing the representation of the opposition in election commissions; extending the timeframes for dispute resolution; enhancing the disclosure of political party and campaign finance; providing for post-election audits of the voter lists and scrutiny of election material, and changing some regulations on the media coverage and the media oversight mechanism. However, a number of long-standing ODIHR recommendations remain unaddressed, including those pertaining to the independence and effectiveness of the Regulatory Authority for Electronic Media (REM), measures aimed at tackling the misuse of administrative resources and pressure on voters, transparency of campaign finance and public scrutiny and audit of voter lists.
16. The Final Report of 19 August 2022 included the following priority recommendations:<sup>6</sup>
- Enhance legal certainty and provide equal opportunities for electoral contestants, by reviewing the legislation to address challenges related to misuse of administrative resources, access to media and eliminate remaining gaps well in advance of elections after transparent consultations;
  - Ensure consistent application of Election Day procedures and enhance the professional capacity of the election administration, standardized mandatory training could be considered for all current and future election officials;
  - The law should provide a clear separation between the incumbents' official functions and campaigning activities. Violations should be proactively prevented and addressed

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<sup>6</sup> Final Report.

through proportionate and dissuasive sanctions;

- Prevent intimidation and pressure on voters, including employees of public institutions and enterprises;
- The legislation should be further reviewed to address gaps and prior ODIHR recommendations, including by explicit regulation of third-party campaigning and provisions on effective, proportionate and dissuasive sanctions for violations and inadequate reporting. In this regard the Criminal Code should be aligned with the Law on Financing of Political Activities;
- Strengthen the independence of the REM by clearly defining in the law its responsibilities during the campaign and extending its authority to all aspects of media coverage of elections; The REM should monitor the media and act *ex officio* on violations of media regulation;
- The REC should promulgate clear, consistent and timely instructions and decisions on all election-day procedures that are not sufficiently regulated by the law;
- The election administration should take measures to enhance the effectiveness of dispute resolution by substantive reviewing all election-day related complaints and facilitating the reporting of administrative and criminal offences to the competent authorities.

### **Tolerance and non-discrimination issues**

17. OSCE pSs have made a number of commitments to promote tolerance and non-discrimination and specifically to combat hate crime, and OSCE/ODIHR supports states in their implementation of those commitments.<sup>7</sup> ODIHR produces an annual report on hate crime<sup>8</sup> to highlight the prevalence of hate crimes and good practices that pSs and civil society have adopted to tackle them. ODIHR also assists pSs design and draft legislation; provides training that builds the capacity of pSs' criminal justice systems and law-enforcement officials, prosecutors and judges; raises awareness of hate crimes among governmental officials, civil society and international organizations; and supports the efforts of civil society to monitor and report hate crimes.

18. In the 2020 Hate Crime Report and ODIHR's key observations,<sup>9</sup> ODIHR recognizes Serbia's efforts in prosecuting hate crimes effectively as well as regularly reporting data to ODIHR. However, ODIHR observes that most of the records reported by the police and prosecution services include the offences of incitement to hatred, defamation,

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<sup>7</sup> OSCE pSs have committed to strongly condemn racial and ethnic hatred, xenophobia, discrimination, anti-Semitism and intolerance against Muslims, Christians and other religions, and have committed to address these phenomena in all their forms (Copenhagen Document, 1990). Since 2003, the OSCE pSs have established a normative framework of OSCE Ministerial Council (MC) decisions to reflect their commitments to address these phenomena: MC Decisions 4/03, 12/04, 10/05, 13/06, 10/07 and 9/09. Additionally, a number of OSCE human dimension commitments recognize the vital importance of pSs' realization of their binding human rights obligations under international treaties, such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

<sup>8</sup> <http://hatecrime.osce.org>.

<sup>9</sup> Findings on the information available to ODIHR on hate crimes in a particular pState in relation to OSCE commitments are presented as Key Observations. There are, in total, 13 Key Observations linked to OSCE pSs' commitments in the area of addressing hate crime. <https://hatecrime.osce.org/our-methodology> This methodology has been in place since the 2020 Hate Crime Report.

discrimination or violation of equality, which fall outside of the OSCE's definition of hate crime. ODIHR recommends Serbia to build the capacity of police on hate crimes.

19. ODIHR observes that Serbia offers support to victims of hate crime as part of its general victim support system through government-funded agencies and civil society organizations (CSOs). CSO providers of specialized support for hate crime victims are often dependent on external funding and have limited geographical reach.<sup>10</sup>
20. ODIHR's 2020 publication "*OSCE Human Dimension Commitments and State Responses to the COVID-19 Pandemic*"<sup>11</sup> reported that intolerance and discrimination was significantly directed towards people of, or perceived to be of, Asian descent in the early phase of the pandemic, including in Serbia. Muslim communities were frequently blamed for spreading the virus in some pSs with majority non-Muslim populations, including Serbia. Refugees and migrants were also blamed for the spread of COVID-19 in many pSs, including in Serbia.
21. ODIHR's recommendations to Serbia on this basis of this publication include:
  - Support victims as they report their experiences, and ensure the availability of all necessary psychological, social and legal support for victims, including through close co-operation with civil society, including funding.
  - Allow for reporting hate crimes online and allowing third-party reporting to police by CSOs and equality bodies.
  - Improve relevant mechanisms for hate crime recording and data collection, including gender disaggregated data and assess the existing current victim support systems.
  - Build law enforcement and justice sector capacities to recognize and effectively investigate hate crimes and to ensure that specialized training, focused on hate crime victims and their needs, is provided for officials and CSOs within the victim support structures.

### **Roma and Sinti issues**

22. ODIHR has a specific mandate to assist pSs in implementing the OSCE Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area<sup>12</sup> and three subsequent OSCE Ministerial Council decisions<sup>13</sup>. ODIHR issued Status Reports on the

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<sup>10</sup> <https://hatecrime.osce.org/national-frameworks-serbia#victimSupport>

<sup>11</sup> *OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic*, Warsaw, 17 July 2020.

<sup>12</sup> OSCE Ministerial Council, Decision No. 3/03, "Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area", Maastricht, 1-2 December 2003.

<sup>13</sup> OSCE Ministerial Council Decisions No. 6/08 adopted in Helsinki on 5 December 2008, No. 8/09 adopted in Athens on 2 December 2009 and No. 4/13 adopted in Kyiv on 6 December 2013.

implementation of this Action Plan in 2008 and 2013<sup>14</sup> . Both reports explored the efforts of pSs as well as challenges in meeting their commitments in the areas of public policy, non-discrimination, socio-economic issues, education, and public and political participation, and the rights of Roma and Sinti in crisis and post-crisis situations.<sup>15</sup> The Third Status Report was issued in 2018 and assessed the progress OSCE pSs have made in implementing their commitments towards enhancing the participation of Roma and Sinti in public and political life.<sup>16</sup>

23. ODIHR noted that participation of Roma in electoral processes remains poor.<sup>17</sup> They continue to be vulnerable to political pressure and manipulation, with reported cases of vote-buying.<sup>18</sup> Thus, ODIHR strongly recommends to increase awareness regarding the importance of electoral processes among Roma, as well as to develop educational initiatives aimed at preventing manipulation and vote-buying.<sup>19</sup>

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<sup>14</sup> “Implementation of the Action Plan on Improving the Situation of Roma and Sinti Within the OSCE Area” ,24 September 2008, OSCE/ODIHR, “Implementation of the Action Plan on Improving the Situation of Roma and Sinti Within the OSCE Area, Status Report 2013”, 24 October 2013, OSCE/ODIHR.

<sup>15</sup> *Ibid.*

<sup>16</sup> Third Status Report: Implementation of the Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area, 11 December 2018, OSCE/ODIHR.

<sup>17</sup> *Ibid.*, p. 32.

<sup>18</sup> *Ibid.*, p. 25.

<sup>19</sup> *Ibid.*, p. 55.